

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 LHF PRODUCTIONS, INC.,

11 Plaintiff,

12 v.

13 DOE 1, *et al.*,

14 Defendants.
15 _____

)
) CASE NO. C17-782 RSM
)
)
) ORDER GRANTING PLAINTIFF'S
) MOTION TO EXPEDITE DISCOVERY
)
)
)
)
)
)

16
17 **I. INTRODUCTION**

18 Plaintiff alleges copyright infringement claims against four unknown Doe Defendants
19 who allegedly used “peer to peer” or BitTorrent file “swapping” networks to illegally obtain
20 and distribute the copyrighted motion picture *London Has Fallen*. Dkt. #1 at ¶¶ 1, 10-35. It
21 now seeks permission to take limited, expedited discovery from various internet service
22 providers (“ISP”) in order to identify and name the Doe Defendants so it can complete service
23 of process and proceed with litigation. Dkt. #5. As discussed below, Plaintiff has
24 demonstrated that: (1) the Doe Defendants are real people and/or entities that may be sued in
25 federal court; (2) it has unsuccessfully attempted to identify the Doe Defendants prior to filing
26 this motion; (3) its claims against the Doe Defendants would likely survive a motion to dismiss;
27
28

1 and (4) there is a reasonable likelihood that service of the proposed subpoenas will lead to
2 information identifying the Doe Defendants. As a result, the Court finds good cause exists to
3 allow Plaintiff to engage in expedited, preliminary discovery.

4 **II. BACKGROUND¹**

5 Plaintiff is a corporation engaged in the production of the motion picture known as and
6 entitled "*London Has Fallen*" for theatrical exhibition, home entertainment and other forms of
7 distribution. Dkt. #1 at ¶ 5. Plaintiff is the owner of the exclusive rights under copyright in the
8 United States in *London Has Fallen*. *London Has Fallen* has been registered with the United
9 States Copyright Office, effective March 14, 2016, and assigned Registration No. PA 1-982-
10 831. *Id.* at ¶ 6 and Ex. A.

11
12 Plaintiff alleges each Doe Defendant copied and distributed Plaintiff's copyrighted
13 motion picture *London Has Fallen*. The true names of Defendants are unknown to Plaintiff at
14 this time. However, each Defendant is known to Plaintiff by the Internet Protocol ("IP")
15 address assigned by an Internet Service Provider ("ISP") and the date and at the time at which
16 the infringing activity of each Defendant was observed. Dkt. #1 at ¶ 10. Through geolocation,
17 the IP address used by each Defendant has been traced to the Western District of Washington.
18 Dkt. #6 at ¶ 20; Dkt. #1-1 at 5. Each IP address has also been observed and associated with
19 significant infringing activity and associated with the exchange of other titles on peer-to-peer
20 networks. Dkt. #1 at ¶ 11. The volume, titles and persistent observed activity associated with
21 each Defendant's IP address also indicate each Defendant is not a transitory or occasional
22 guest, but is either the primary subscriber of the IP address or someone who resides with the
23 subscriber and/or is an authorized user of the IP address. *Id.* The volume of the activity
24
25
26
27

28 ¹ The following background is taken from Plaintiff's Complaint and the Declaration of Daniel Arheidt filed in support of Plaintiff's Motion for Expedited Discovery. Dkts. ## 1 and 6.

1 associated with each Defendant's IP address further indicates that anyone using or observing
2 activity on the IP address would likely be aware of the conduct of Defendant. Also, the volume
3 and titles of the activity associated with each Defendant's IP address indicate each Defendant is
4 not a child, but an adult. Dkt. #1 at ¶ 11.

5 Plaintiff alleges Defendants are each participants in a peer-to-peer ("P2P") network
6 using the BitTorrent protocol. *Id.* at ¶ 12. The BitTorrent protocol makes even small
7 computers with low bandwidth capable of participating in large data transfers across a P2P
8 network. To begin an exchange, the initial file-provider intentionally elects to share a file with
9 a torrent network. This initial file is called a seed. Other users ("peers") connect to the
10 network and connect to the seed file to download. As additional peers request the same file
11 each additional user becomes a part of the network from where the file can be downloaded.
12 However, unlike a traditional peer-to-peer network, each new file downloader is receiving a
13 different piece of the data from users who have already downloaded the file that together
14 comprises the whole. This piecemeal system with multiple pieces of data coming from peer
15 members is usually referred to as a "swarm." The effect of this technology makes every
16 downloader also an uploader of the illegally transferred file(s). This means that every "node"
17 or peer user who has a copy of the infringing copyrighted material on a torrent network can
18 also be a source of download, and thus distributor for that infringing file. *Id.*

19 Plaintiff further alleges that Defendants' actions are part of a common design, intention
20 and purpose to hide behind the apparent anonymity provided by the Internet and the BitTorrent
21 technology to download pieces of the copyrighted motion picture in a manner that, but for the
22 investigative technology used by Plaintiff, would be untraceable, leaving the Plaintiff without
23 the ability to enforce its copyright rights. Dkt. #1 at ¶ 14. By participating in the "swarm" to
24
25
26
27
28

1 download Plaintiff's copyrighted motion picture, the Defendants agreed with one another to use
2 the Internet and BitTorrent technology to engage in violation of federal statute to accomplish
3 and unlawful objective. *Id.*

4 Plaintiff has identified each Defendant by the IP address assigned by the ISP used by
5 each Defendant and the date and time at which the infringing activity of each Defendant was
6 observed. *Id.* at ¶ 15. This is accomplished using forensic software to collect, identify and
7 record the IP addresses in use by those people that employ the BitTorrent protocol to share,
8 copy, reproduce and distribute copyrighted works. The end result are evidence logs of
9 infringing transactions and the IP addresses of the users responsible for copying and
10 distributing the audiovisual work, here *London Has Fallen*. Dkt. #1 at ¶ 17. The IP addresses,
11 hash value, dates and times, ISP and geolocation contained in Exhibit B to the Complaint
12 correctly reflect the subscribers using the IP addresses and that they were all part of a "swarm"
13 of users that were reproducing, distributing, displaying or performing the copyrighted work.
14 *Id.*

15 Plaintiff believes that each Defendant, without the permission or consent of Plaintiff,
16 has used, and continues to use, an online media distribution system to wrongfully
17 misappropriate, reproduce and distribute to the public, including by making available for
18 distribution to others, *London Has Fallen*. Dkt. #1 at ¶28. Plaintiff further believes that each
19 Defendant participated in a swarm and/or reproduced and/or distributed the same seed file of
20 *London Has Fallen* in digital form either directly or with each other. Plaintiff has identified
21 each Defendant by the IP address assigned to that Defendant by his or her ISP and the date and
22 time at which the infringing activity of each Defendant was observed. *Id.* In addition, or in the
23 alternative, Plaintiff believes that Defendants obtained Internet access through an ISP and
24
25
26
27
28

permitted, facilitated and materially contributed to the extensive use of the Internet through his ISP for infringing Plaintiff's exclusive rights under The Copyright Act by others. *Id.* at ¶ 29. Defendants, with knowledge of the infringing conduct, failed to reasonably secure, police and protect the use of his Internet service against use for improper purposes such as piracy, including the downloading and sharing of Plaintiff's motion picture by others. *Id.* Defendants had the right and ability to supervise and control the activity constituting the infringement. *Id.* Plaintiff now seeks expedited discovery to identify the Defendants.

III. DISCUSSION

A. Legal Standard

This Court may authorize early discovery before the Rule 26(f) conference for the parties' and witnesses' convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the Ninth Circuit generally consider whether a plaintiff has shown "good cause" for such early discovery. *See, e.g., Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14 (D. Ariz. 2001) (collecting cases and standards). When the identities of defendants are not known before a Complaint is filed, a plaintiff "should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). In evaluating whether a plaintiff establishes good cause to learn the identity of Doe defendants through early discovery, courts examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the Court can determine that the defendant is a real person who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a motion to dismiss, and (4) proves that the discovery is likely to lead to

1 identifying information that will permit service of process. *Columbia Ins. Co. v.*
2 *seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999).

3 **B. Plaintiff Has Shown Good Cause to Take Early Discovery**

4 Here, Plaintiff established good cause to engage in early discovery to identify the Doe
5 Defendants. First, Plaintiff has associated the Doe Defendants with specific acts of employing
6 the BitTorrent protocol to share, copy, reproduce and distribute copyrighted works. Dkt. #1 at
7 ¶ 17 and Dkt. #6 at ¶ 20. Plaintiff has been able to trace the alleged infringing activity to
8 individual IP addresses in this judicial District. Dkt. #6 at ¶¶ 20-21, Dkt. #1-1 at 5. Second,
9 Plaintiff has adequately described the steps it took in an effort to locate and identify the Doe
10 Defendants. *See* Dkt. #6. Specifically, Plaintiff utilized geolocation technology to locate the
11 IP addresses in this District. Dkt. #6 at ¶¶ 20-21. Third, Plaintiff has pleaded the essential
12 elements to state a claim for Copyright Infringement under 17 U.S.C. § 501, *et seq.* Dkts. #1 at
13 ¶¶ 25-35. Fourth, the information proposed to be sought through a Rule 45 subpoena appears
14 likely to lead to identifying information that will allow Plaintiff to effect service of process on
15 the Doe Defendants. Specifically, Plaintiff states it will seek subscriber information associated
16 with the alleged infringing IP address. Dkt. #6 at ¶ 21.

17 Taken together, the Court finds that the foregoing factors demonstrate good cause to
18 grant Plaintiff's motion for leave to conduct limited expedited discovery. *See Semitool, Inc. v.*
19 *Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Therefore, the Court will
20 grant discovery limited to documents and/or information that will allow Plaintiff to determine
21 the identities of the Doe Defendants in order to effect service of process.

22 **IV. CONCLUSION**

23 For the reasons set forth above, the Court hereby ORDERS:
24
25
26
27
28

1. Plaintiff may immediately serve on its identified Internet Service Providers (or their associated downstream ISPs) a Rule 45 subpoena to obtain documents and/or information to identify the Does Defendants.
2. At this time, any document requests shall be limited to documents sufficient to identify all names, physical addresses, PO boxes, electronic addresses (including email addresses), telephone numbers, or other customer identifying information that are or have been associated with the alleged infringing IP addresses contained in Exhibit B to the Complaint, Dkt. #1-1 at 5.

DATED this 24th day of May 2017.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE